

HOUSE BILL 2439
By Odom

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 6, Part 1, relative to child custody and child custody orders.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 6, Part 1, is amended by adding the following new sections to be codified as Sections 36-6-106, 36-6-107, 36-6-108 , 36-6-109 and 36-6-110:

Section 36-6-106. Notwithstanding any common law presumption to the contrary, in any proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that abuse, as defined in Tennessee Code Annotated, Section 36-3-601, has occurred within the family raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of the abuse.

Section 36-6-107. In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the court has made a finding that abuse, as defined in Tennessee Code Annotated, Section 36-3-601, has occurred within the family:

(a) The court shall consider as primary the safety and well-being of the child and of the parent who is the victim of family abuse;

(b) The court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person; and

(c) If a parent is absent or relocates because of an act of abuse by the other parent, such absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

Section 36-6-108.

(a) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by a court that abuse, as defined in Tennessee Code Annotated, Section 36-3-601, has occurred within the family raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a perpetrator of the abuse.

(b) If a determination of family abuse has been made as provided in subsection (a), the location where the parent who is not a perpetrator of the abuse chooses to reside, whether within or outside the state, is rebuttably presumed to be the correct location and the one in the best interest of the child.

Section 36-6-109. In every proceeding in which there is at issue the modification of an order for custody or visitation of a child, the finding that abuse, as defined in Tennessee Code Annotated, Section 36-3-601, has occurred within the family since the last custody determination constitutes a finding of a change of circumstances.

Section 36-6-110.

(a) A court may award visitation by a parent who committed abuse, as defined in Tennessee Code Annotated, Section 36-3-601, within the family only if the court finds that adequate provision for the safety of the child and the parent who is a victim of the abuse can be made.

(b) In a visitation order, a court may:

(1) Order an exchange of a child to occur in a protected setting;

(2) Order visitation supervised by another person or agency;

(3) Order the perpetrator of family abuse to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;

(4) Order the perpetrator of family abuse to abstain from possession or consumption of alcohol or controlled substances during the visitation and twenty-four (24) hours preceding the visitation;

(5) Order the perpetrator of family abuse to pay a fee to defray the costs of supervised visitation;

(6) Prohibit overnight visitation;

(7) Require a bond from the perpetrator of family abuse for the return and safety of the child;

(8) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family abuse, or other family or household member.

(c) Whether or not visitation is allowed, the court may order the address of the child and the victim to be kept confidential.

(d) The court may refer but shall not order an adult who is a victim of family abuse to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of family abuse as a condition of receiving custody of a child or as a condition of visitation.

(e) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation.

SECTION 2 . This act shall take effect July 1, 1996, the public welfare requiring it.